

CHAPTER NO. 200

SENATE BILL NO. 1587

By Blackburn, Crowe, Miller, Williams, Atchley, Burchett, Burks, Carter, Clabough, Cohen, Cooper, Crutchfield, Davis, Dixon, Elsea, Ford, Fowler, Graves, Harper, Haun, Haynes, Herron, Kurita, Kyle, Leatherwood, McNally, Person, Ramsey, Rochelle, Springer, Womack, Mr. Speaker Wilder

Substituted for: House Bill No. 1103

By Godsey, McDaniel, Ralph Cole, Mumpower, Wood, Scroggs, Walker, Rinks, McKee, Ford, Roach, Bittle, Montgomery, Boyer, Walley, Harwell, Hagood, Armstrong, McCord, Pleasant, Sharp, Sargent, Todd, Black, Hassell, Beavers, David Davis, Whitson, Hargett, West, Larry Turner,
Sherry Jones, Baird, Buttry, Dunn, Pruitt, Langster, Brenda Turner, Maddox, Fitzhugh

AN ACT To amend Tennessee Consumer Protection Act of 1977, Title 47, Chapter 18, Part 1, relative to the protection of elder citizens.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is hereby amended by adding the following as an appropriately codified new section:

Protection of Elder Persons--Cumulative, additional and supplemental penalties.

(a) Any person who knowingly uses, or has knowingly used, a method, act or practice which targets elderly persons and is in violation of the Tennessee Consumer Protection Act, is liable to the State of Tennessee for a civil penalty of not more than ten thousand (\$10,000) dollars for each violation. Each violation may include but is not limited to, each elder person solicited, each advertisement that was distributed, each misrepresentation or deceptive statement that appeared on a solicitation, each time that an advertisement appeared on television or on radio, each contact *i.e.*, telephone call, direct mail solicitation or in person solicitation with an elder person to promote or solicit using unfair, misleading or deceptive acts or practices.

In addition, when determining the amount of the civil penalty to be imposed pursuant to this part, the court may consider

(1) The good or bad faith of the violator as it relates to the violations;

(2) The injury to the public;

(3) The violator's ability to pay;

(4) The public's interest in eliminating the benefits derived by the violator from the violations; and

(5) The necessity of vindicating the authority of the state and the strong need to defer future violations.

(b) The civil penalties recoverable by the State of Tennessee under this part are supplemental and cumulative to any other available civil penalties and

relief available under other laws, regulations and rules, including but not limited to those available pursuant to Tennessee Code Annotated, § 47-18-108.

(c) As used in this section, unless the context otherwise requires:

(1) "elder person" means any person who is sixty (60) years of age or older. The elder person need not be a citizen of Tennessee if the company or individual is operating from Tennessee or the court otherwise has jurisdiction over the company or individual for engaging in an unfair, misleading or deceptive act or practice from Tennessee.

(2) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, Tennessee Code Annotated, § 47-18-101 *et seq.* and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include but are not limited to, the Prize and Promotion Act, Tennessee Code Annotated, § 47-18-120 *et seq.*, Health Club Act, Tennessee Code Annotated, § 47-18-301 *et seq.*, Buyer's Clubs Act, Tennessee Code Annotated, § 47-18-501 *et seq.*, Home Solicitations Sales Act of 1974, Tennessee Code Annotated, § 47-18-601 *et seq.*, Tennessee Credit Services Businesses Act, Tennessee Code Annotated, § 47-18-1001 *et seq.*, Consumer Telemarketing Protection Act of 1990, Tennessee Code Annotated, § 47-18-1501, Unsolicited Telefacsimile Advertising Act, Tennessee Code Annotated, § 47-18-1601 *et seq.*, Tennessee Employment Agency Act, Tennessee Code Annotated, § 47-18-1701 *et seq.*, and Membership Camping Act, Tennessee Code Annotated, § 66-32-301 *et seq.*

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 12, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of May 1999


DON CONQUIST, GOVERNOR